

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

BANK OF AMERICA, a national banking
association,

Plaintiff,

v.

ANALYTICS, INC., a Missouri corporation,
et al.,

Defendants.

Case No. 4:10-cv-00563-RWS

**MOTION FOR ORDER AUTHORIZING PLACEMENT OF RESEARCH ANIMALS
IN ANIMAL SANCTUARIES AND INDEMNIFYING PARTIES
FROM ANY FUTURE LIABILITY ASSOCIATED THEREWITH**

COMES NOW Morris-Anderson & Associates, Ltd., the duly-appointed receiver in this case (the “Receiver”) and files this *Motion for Order Authorizing Placement of Research Animals in Animal Sanctuaries and Indemnifying Parties from Any Future Liability Associated Therewith* (the “Motion”). In support of the Motion, the Receiver states as follows:

BACKGROUND

1. On April 1, 2010, Bank of America, N.A. (“Plaintiff”) instituted this action by filing of Complaint (the “Complaint”) against Defendants Analytics, Inc., AniClin Preclinical Services, LLC, AvivoClin Clinical Services, LLC, Azopharma Contract Pharmaceutical Services, LLC, CAS-MI Laboratories, LLC, and Chemir Analytical Services, LLC (collectively, the “Defendants”).

2. Concurrently with the filing of the Complaint, Plaintiff filed an Emergency Motion for Turnover of Collateral and For Appointment of Receiver (the “Motion”).

3. On April 9, 2010, the Court granted the Motion in part and entered an Order Appointing Receiver (the “Receivership Order”), pursuant to which it appointed the Receiver as receiver of the Collateral, as defined in the Order, in the possession of Analytics, Inc., AniClin Preclinical Services, LLC, Chemir Analytical Services, LLC, CAS-MI Laboratories, LLC, and the division of Azopharma

Contract Pharmaceutical Services, LLC that was formerly known as Cyanta Analytical Laboratories, Inc. prior to a merger in or about September, 2009 (collectively, the “Receivership Borrowers”).

4. Pursuant to the Receivership Order, the Receiver has a number of powers and duties related to the Collateral. Among other things, the Receiver is responsible for (i) taking possession, custody and control of the Collateral, (ii) collecting and receiving the proceeds of the Receivership Borrowers’ accounts receivable and all other sums of money due or owing to the Receivership Borrowers that constitute or relate to the Collateral, and (iii) marketing, selling or otherwise hypothecating or disposing of the Collateral.

RELIEF REQUESTED

5. The Collateral includes approximately 120 dogs and 55 monkeys that are currently being held at the AniClin Preclinical Services (“AniClin”) facility in New Jersey and that were previously used by AniClin in various types of pharmaceutical and chemical testing (collectively, the “Animals”).

6. The Receiver has investigated the various options available with respect to the Animals and has determined that it is in the best interests of the Receivership Estate for the Animals to be placed with the various animal sanctuaries listed on Exhibit A attached hereto and incorporated by reference herein (collectively, the “Sanctuaries”). However, such placements would not benefit the Receivership Estate if it were left open to potential future liability arising from or relating to the Animals after the placements.

7. In connection with the placement of the Animals with the Sanctuaries, the Sanctuaries have agreed to indemnify and hold the Receiver, the Plaintiff, their respective attorneys and their respective employees and agents (the “Indemnified Parties”) harmless from any and all claims, demands or other liabilities associated with the Animals arising after placement thereof with the Sanctuaries (the “Sanctuary Indemnities”)

8. In addition to the Sanctuary Indemnities, the Receiver believes it is necessary to obtain from the Court a release from any and all liabilities, claims and/or causes of action of any person or entity, not merely the Sanctuaries, arising from or relating to the Animals from and after the placement of

the Animals with the Sanctuaries because of the detriment to the Receivership Estate if the Estate was left open to potential future liability arising from or relating to the Animals after their placement with the Sanctuaries.

9. The Receiver respectfully requests that this Court authorize the Receiver to place the Animals with the Sanctuaries and absolve the Receiver from any and all liabilities, claims and/or causes of action of any person or entity arising from or relating to the Animals from and after the placement of the Animals with the Sanctuaries.

10. Federal Rule of Civil Procedure 66 provides that “the practice in administering an estate by a receiver . . . must accord with the historical practice in federal courts or with a local rule.”

11. District courts have wide discretion in determining the appropriate actions to be taken in the administration of a federal court receivership. *See Quilling v. Trade Partners, Inc.*, 572 F.3d 293, 298 (6th Cir. 2009); *SEC v. Basic Energy & Affiliated Res.*, 273 F.3d 657, 668 (6th Cir. 2001). This wide discretion derives from the inherent powers of an equity court to fashion relief. *SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992).

12. The relief sought by the Receiver herein falls within the powers of the Court with respect to this receivership. Furthermore, the relief sought is in furtherance of the duties and authorities bestowed upon the Receiver by the Receivership Order.

REQUEST FOR WAIVER OF LOCAL RULE 7-4.01

13. Because the Receiver has identified the legal authority on which it is relying, the Receiver respectfully requests that the Court waive the requirement set forth in Rule 7-4.01(A) of the Local Rules for the United States District Court for the Eastern District of Missouri that it file a separate memorandum in support of the relief requested herein.

WHEREFORE, the Receiver respectfully requests that the Court enter an Order (i) authorizing and directing the Receiver to place the Animals with the Sanctuaries upon the Receiver's receipt of an appropriate indemnity and hold harmless agreement from the Sanctuaries wherein the Sanctuaries will indemnify and hold harmless the Indemnified Parties, (ii) absolving the Receiver from any and all liabilities, claims and/or causes of action of any person or entity arising from or relating to the Animals from and after the placement of the Animals with the Sanctuaries, and (iii) granting such other and further relief as the Court deems just and proper under the circumstances.

Dated: June 14, 2010

Respectfully submitted,

THOMPSON COBURN LLP

/s/ David A Warfield

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*Attorneys for Receiver Morris-Anderson &
Associates, Ltd.*

Certificate of Service

I hereby certify that on June 14, 2010, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

Brian C. Walsh
BRYAN CAVE LLP
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St. Louis, MO 63102-2750

Lloyd A. Palans
BRYAN CAVE LLP
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St. Louis, MO 63102-2750

Robert A. Breidenbach
GOLDSTEIN AND PRESSMAN, P.C.
121 Hunter Avenue
Suite 101
St. Louis, MO 63124-2082

/s/ David A. Warfield

Exhibit A

Dogs

Approximately 120 dogs will be placed as follows:

Approximately 90 dogs will be placed with:

Pets Alive Sanctuary
363 Derby Road
Middletown, NY 10940
www.petsalive.com

Approximately 30 dogs will be placed with

In Defense of Animals
3010 Kerner Blvd.
San Rafael, CA 94901
www.idausa.org

It is possible that approximately 30 of the aforementioned dogs will be placed at

Washington Animal Rescue League
71 Oglethorpe Street NW
Washington, DC 20011-2346
www.warl.org

If this occurs, the number of dogs placed at Pets Alive and In Defense of Animals will be adjusted.

Transportation and placement of the dogs is being arranged with the assistance of

Best Friends Animal Society
5001 Angel Canyon Road
Kanab, UT 84741-5000
www.bestfriends.org

Mayor's Alliance for NYC's Animals
244 Fifth Avenue, Suite R290
New York, NY 10001-7604
www.animalallianceny.org

Monkeys

Approximately 55 Monkeys will be placed as follows:

Approximately 25 monkeys will be placed with

Primarily Primates
26099 Dull Knife Trail.
San Antonio, Texas 78255
www.primarilyprimates.org

Approximately 13 monkeys will be placed with

Born Free USA (Headquarters Office)
1122 S Street
Sacramento, CA 95811
www.bornfreeusa.org

Approximately 10 monkeys will be placed with

Mindy's Memory Primate Sanctuary
P.O. Box 134
Newcastle, OK 73065
www.Mindysmem.org

Approximately 7 monkeys will be placed with

Wildlife Rescue & Rehabilitation, Inc.
P.O. Box 369
Kendalia, TX 78027
www.wildlife-rescue.org

Placement and transportation of the monkeys will be facilitated by

In Defense of Animals
3010 Kerner Blvd.
San Rafael, CA 94901